

In re Application of: Hayes et al.
Confirmation No: 7655
Application No.: 10/660,069
Examiner: WEGERT, S.L
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REMARKS

Claims 1-37 are pending in the application. The elected claims set forth, herein, are merely to comply with the Restriction Requirement and is not to be construed as surrender of any subject matter in the instant application. Applicants hereby reserve the right to pursue the subject matter of the canceled claims in one or more divisional patent applications.

Restriction Requirement

In the above-identified Office Action, the examiner set forth a restriction requirement and required election of one of the following groups under 35 U.S.C. § 121:

Group I: Claim(s) 1-20, drawn to a method of analyzing nerve cell damage by measuring spectrin metabolites; classified in class 435, subclass 7.1+.

Group II: Claims 21-37, drawn to an agent that specifically binds a spectrin breakdown product, and mixtures comprising; classified in class 424, subclass 130.1+.

In response, Applicants elect Group II: Claims 21-37, drawn to an agent that specifically binds a spectrin breakdown product, and mixtures comprising; classified in class 424, subclass 130.1+. This election is made with traverse.

The Examiner asserts that Groups I and II are different inventions in that "the antibody of Invention II can be used to immunoprecipitate the spectrin metabolites, while the method of Invention I can be performed by taking a biopsy of the affected neural tissue." Applicants respectfully traverse. Applicants describe that the method of Invention I is detected by an agent, e.g. antibody that binds the spectrin break down products. Even if a biopsy is taken, detection is based on the agent of Invention II. Searching for agents that specifically bind the spectrin break down products, the search encompasses the method of Invention I. That is, the agent of Invention II is required to carry out the method of Invention I. A search based on Group I would ultimately yield the end result of Group II and would therefore, not be an undue burden. Applicants respectfully request that lifting the restriction requirement and prosecuting Groups I

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and II would result in a significant savings of time and resources for both the Patent Office and Applicants.

The elected claims set forth, herein, are merely to comply with the Restriction Requirement and is not to be construed as surrender of any subject matter in the instant application. Applicants hereby reserve the right to pursue the subject matter of the canceled claims in one or more divisional patent applications. Applicants invite the Examiner to call the undersigned if it is believed that the above restriction election is incomplete or improper in any way, or if a telephonic interview will expedite the prosecution of the application to an allowance.

Although, Applicants believe that no extensions of time are required with submission of this paper, Applicants request that this submission also be considered as a petition for any further extensions of time if necessary. The Commissioner for Patents and Trademarks is hereby authorized to charge the amount due for any retroactive extensions of time and any deficiency in any fees due with the filing of this paper or credit any overpayment in any fees paid on the filing or during prosecution of this application to Deposit Account No. 50-0951.

Respectfully submitted,
AKERMAN SENTERFITT



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